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~~Certified copy to Defendant~~

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA,

Plaintiff, Respondent,

vs.

JERRY LEON MASON,

Defendant, Petitioner.

Case No. CF-2012-4414

Judge Gillert

DISTRICT COURT
FILED

NOV 03 2014

SALLY HOWE SMITH, COURT CLERK
STATE OF OKLA. TULSA COUNTY

ORDER RECOMMENDING PETITIONER BE DENIED AN APPEAL
OUT OF TIME

This matter comes on for consideration of the Petitioner's "Application for Post-Conviction Relief" wherein the Petitioner requests an appeal out of time. The Court has reviewed the Petitioner's Application, the State's Response thereto, and the docket sheet in this matter. The Court being fully advised in the premises and concerns finds as a matter of facts and conclusions of law as follows:

The matter under consideration does not present any genuine issue of material fact requiring a formal hearing with the presentation of witnesses and the taking of testimony. *Johnson v. State*, 1991 OK CR 124, 823 P.2d 370. The matter will therefore be decided based on the records the Court has stated it has reviewed.

HISTORY OF PETITIONER'S CASE

Petitioner was charged by an information filed in the District Court on October 3, 2012 with the following offenses:

- 1) Rape-1st Degree
- 2) Burglary-First Degree

ORIGINAL

EXHIBIT

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tabbies

3) Rape-1st Degree

4) Rape-1st Degree

On May 13, 2014 the Petitioner was present, in open court, and represented by Brian Rayl with the Public Defender's Office. The Petitioner was sworn in open court, entered pleas on nolo contendere to counts one (1), two (2), and three (3) as filed as well as count four (4) which had been amended to the offense of forcible sodomy. The Petitioner waived his right to jury and non-jury trial. The Court accepts the Petitioner's pleas of guilty and found the defendant guilty in each count. The Court sentenced the Petitioner in each of count one (1), two (2), three (3), and (4) to twenty five years, with the first eighteen (18) years to be served in the Department of Corrections, and the last seven years to be suspended. Additionally, the Court imposed a \$600.00 fine in count.

The court ordered each of the counts to run concurrent with the other. The Petitioner was advised of his appeal rights. On May 20, 2014 the Petitioner filed a "Motion to Withdraw Plea." On May 21, 2014 the Court signed an Order setting the Motion to Withdraw Plea for hearing on June 16, 2014. On June 11, 2014 the Court reset the hearing on the Petitioner's Motion to Withdraw Plea to June 12, 2014. On June 12, 2014, the Petitioner was present in open court and represented by Matthew Day and Isaiah Parsons. The Petitioner's case was called for hearing on his Motion to Withdraw Plea. A hearing was held where the defense presented the testimony of one witness, and the state presented the testimony of two witnesses. After parties rested, and hearing the argument of both parties, the court overruled the motion to withdraw plea. The Petitioner was advised of his appeal rights.

On June 25, 2014 the Petitioner filed an "Application for Determination of Indigence" and a "Designation of Record for Appeal From District Court." On July 11, 2014 the Petitioner was granted certificate of appeal number C-2014-576. On August 14, 2014 the Petitioner filed an "Application for Post-Conviction Relief" in the District Court. On October 2, 2014 the District Court filed an "Order Declining Jurisdiction" from the Oklahoma Court of Criminal Appeals.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In Petitioner's "Application for Post-Conviction Relief" the Petitioner states that while his "...notice of intent to appeal was filed outside of the ten days that Rule 4.2 of the Rules of the Court of Criminal Appeals requires..." this was due to Petitioner's inability to make the decision to appeal "...in the requisite short amount of time." Petitioner further argues he was "...not given adequate time to determine whether to appeal..." and was unable to "...make up (his) mind..."

The Court finds that Petitioner's indecision over whether to appeal from this court's denial of his Motion to Withdraw Plea does not constitute a unique circumstance such as to warrant the granting of an appeal out of time. The Petitioner was aware of the time period within which he was required to commence an appeal. Since there are no facts to show that the Petitioner was denied an appeal through no fault of his own, the Court recommends that the Petitioner's request for an appeal out of time be denied.

IT IS THEREFORE the recommendation of the Court that the Petitioner's request for an appeal out of time be denied.

SO ORDERED this 20 day of

October, 2014.

Th. Gillert
TOM GILLERT
DISTRICT COURT JUDGE

CERTIFICATE OF MAILING

I certify that on the date of filing, a certified copy of the above and foregoing Order was placed in the United States Mail with sufficient postage affixed thereto, addressed to:

Jerry L. Mason, #124786
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Granite, OK 73547

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Counsel for Petitioner

**SALLY HOWE-SMITH
TULSA COUNTY COURT CLERK**

BY: 

DEPUTY COURT CLERK